

Template for Marriage Legislation Testimony

[consider partnering with members of the business community which offer domestic partner benefits]

[tailor what follows to the provisions of the bill, e.g., to the extent that your state already refuses to recognize lesbian and gay marriages, emphasize that the bill is not intended to reserve marriage to heterosexual couples; to the extent that the bill expressly applies to private actors, emphasize the prevalence of domestic partner benefits]

[tailor what follows to the reflect the messages that are most likely to resonate in your state, e.g., insert, delete, or modify examples of legal protections that lesbian and gay couples need]

[consider humanizing what follows with a story of a lesbian or gay couple who would be harmed if they were deprived of protections for their relationship]

[BILL]
POSITION OF *[ORGANIZATION(S)]*
[DATE]

[Organization(s)] strongly objects to *[bill]*, which seeks to deprive loving lesbian and gay couples in this state of any mechanism for ensuring that the law recognizes their emotional and financial commitment to one another. *[Bill]* is constitutionally deficient and, more importantly, fundamentally unfair.

Background Information

[summarize the provisions of the bill]

***[Bill]* Is Fundamentally Unfair**

Legal protections for committed relationships are often vital. For example, Because *[bill]* seeks to deprive lesbian and gay couples of any means of securing such protections for their relationships, it is fundamentally unfair.

The fundamental unfairness of *[bill]* is of concern beyond the lesbian and gay community. Nearly 200 of the Fortune 500 companies offer domestic partner benefits. Numerous small businesses in this state do likewise. The enactment of *[bill]* would send a message to companies that do – or might want to do – business in this state that this state is not a hospitable place for a valued segment of their workforces.

[Bill] also raises serious constitutional concerns. The Fourteenth Amendment of the United States Constitution guarantees that no state will “deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1; see also *[state constitutional analog]*. The United States Supreme Court has long held that discrimination for its own sake is inherently improper: “[I]f the constitutional conception of ‘equal protection of the

laws' means anything, it must at the very least mean that a bare [governmental] desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." United States Dep't of Agric. v. Moreno, 413 U.S. 528, 534 (1973); see also Palmore v. Sidoti, 466 U.S. 429, 433 (1984) ("The Constitution cannot control . . . prejudices but neither can it tolerate them. Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect."). In Romer v. Evans, 517 U.S. 620, 634-35 (1996), the Court made express that this fundamental principle applies equally to discrimination against lesbian and gay people. If the state legislature were to enact [*bill*], it would do so with the intent of fencing lesbian and gay couples out of any form of civil equality, however great or small. There is no doubt that such an enactment would violate the constitutional guarantee of equal protection of the laws.

Moreover, in Lawrence v. Texas, 123 S. Ct. 2472 (2003), the United States Supreme Court struck down a Texas statute criminalizing "homosexual conduct," holding that the statute at issue violated the fundamental right to privacy and autonomy under the United States Constitution. Emphasizing that gay and lesbian couples "are entitled to respect for their private lives," the Court held that a gay or lesbian couple may form an "intimate," "personal," and "enduring" relationship and "still retain their dignity as free people" because "[t]he liberty protected by the Constitution allows homosexual persons the right to make this choice." Lawrence, 123 S. Ct. at 2478. Grounded in a line of cases beginning with Griswold v. Connecticut, 381 U.S. 479 (1965), its holding is both consistent with and broader than the well-established notion that "individual decisions . . . concerning the intimacies of [a] physical relationship, even when not intended to produce offspring" - "including intimate choices by unmarried as well as married persons" - "are a form of 'liberty' protected by the Due Process Clause of the Fourteenth Amendment." Lawrence, 123 S. Ct. at 2483 (quotation omitted).

[O]ur laws and tradition afford constitutional protection to personal decisions relating to marriage, procreation, contraception, *family relationships*, child rearing, and education. In explaining the respect the Constitution demands for the autonomy of the person in making these choices, [the United States Supreme Court] stated as follows:

These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Persons in homosexual relationships may seek autonomy for these purposes, just as heterosexual persons do.

Id. at 2481-82 (quotation and citation omitted) (emphasis added). Simply stated, the Court held that gay and lesbian couples "are entitled to respect for their private lives;" the government "cannot demean their existence or control their destiny." Id. at 2484. The proposed legislation impermissibly penalizes gay and lesbian couples for their exercise of this fundamental right to enter into intimate relationships.

We at the ACLU are challenging the constitutionality of a similar anti-gay constitutional amendment in the state of Nebraska. Significantly, a federal court recently issued a forceful ruling in which it flatly rejected attempts by the state of Nebraska to dismiss our claims that the amendment violates the constitutional guarantees of equal protection and due process and constitutes an unconstitutional bill of attainder. We are confident that the federal court in this jurisdiction would do no differently if presented with a similar circumstance.

Conclusion

For these reasons, *[organization(s)]* urges the defeat of *[bill]*.